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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT CONTRERAS

Plaintiff,

vs.

CITY OF LOS ANGELES; JULIO
BENAVIDES; MARIO FLORES; and
DOES 1-10, inclusive,

Defendants

Case No. CV11-01480 SVW (SH)

The Honorable Stephen V. Wilson

**NOTICE OF MOTION AND
MOTION FOR ATTORNEY'S FEES
AND COSTS PURSUANT TO 42
U.S.C. § 1988**

*[Declarations of Danilo Becerra; John
Burton; John C. Fattahi; Dale K. Galipo;
Milton C. Grimes; Paul L. Hoffman;
Donald G. Norris; Melanie Partow;
Hilary L. Rau; William L. Schmidt;
Thomas C. Seabaugh; Richard Vasquez;
and attached exhibits filed concurrently
herewith]*

Date: February 25, 2013
Time: 1:30 p.m.
Ctrm: 6

1 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that on February 25, 2013 at 1:30 PM or as soon
3 thereafter as this motion may be heard in the above-entitled Court, Plaintiff Robert
4 Contreras will move this Court for an Order awarding reasonable attorney fees and
5 costs pursuant to 42 U.S.C. Section 1988 and Federal Rule of Civil Procedure 54(d).

6 Plaintiff will request that the Court award attorney's fees in the amount of
7 \$922,118.50. Plaintiff will further request that the Court award expenses in the
8 amount of \$85,548.98. Finally, Plaintiff will request that the Court award attorney's
9 fees for work performed in connection with the instant motion for attorney fees,
10 including after these papers are filed, as will be set forth in the reply papers.

11 This Motion is based on the grounds that the Plaintiff was the prevailing party
12 at trial on his civil rights claim and is entitled to attorney fees as a matter of law.
13 This Motion will be further based on this Notice of Motion, the attached
14 Memorandum of Points and Authorities, the concurrently filed declarations, the
15 attached exhibits, upon the pleadings on file herein, and upon such other oral and
16 documentary evidence as may be presented at the time of the hearing.

17
18 DATED: January 22, 2013

LAW OFFICES OF DALE K. GALIPO

19
20 /s/ Thomas C. Seabaugh
21 Dale K. Galipo
22 Thomas C. Seabaugh
23 Attorneys for Plaintiff Robert Contreras
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The verdict of September 21, 2012 marked the culmination of an extensive campaign to vindicate the constitutional rights of Plaintiff Robert Contreras. In the course of litigation, Plaintiff's case attracted significant public concern and attention, and his victory was widely reported in the media.

Robert Contreras ("Plaintiff") brought the instant action against Defendants City of Los Angeles and Los Angeles Police Department Officers Julio Benavides and Mario Flores ("Defendants") (Doc. No. 1) on February 17, 2011. Plaintiff claimed, *inter alia*, that he was subjected to excessive force in violation of the Fourth Amendment when defendant police officers shot him repeatedly in the back on the night of September 3, 2005, causing permanent quadriplegia and a lifetime of painful disability. *Id.*

This was a complex case vigorously defended by the City of Los Angeles. From the outset, an internal investigation by the city, which Plaintiff's attorneys were compelled to carefully study and examine, had already endorsed the officers' actions. Meanwhile, the officers emphatically insisted that Plaintiff had pointed a gun at them and that they had shot him in self-defense. The jury ultimately rejected the conclusions of the investigation and the testimony of the officers in light of the physical evidence: no gun was ever found, and the bullets entered Plaintiff's back.

On December 19, 2011, the Court bifurcated the liability and damages phases of Plaintiff's excessive force claim. A three-day jury trial was held on Plaintiff's excessive force claim, and the jury found in favor of Plaintiff on February 2, 2012. (Dckt. 97). Following the first phase of trial, the parties' attorneys agreed to settle the matter for \$4.5 million. This settlement was based on defense experts' opinions that Plaintiff's future medical care alone would cost at least \$3.8 million. However, despite recommendations from defense counsel, the relevant city authorities

1 subsequently rejected the settlement. On September 21, 2012, after another three-
 2 day jury trial, the jury awarded Plaintiff \$4.5 million for the present value of future
 3 costs of medical care and \$1,225,000 for past and future physical pain, for a total of
 4 \$5,725,000 (Doc. No. 193).

5 Litigating police misconduct cases requires experience and an understanding
 6 of issues that are unique to civil rights victims as compared to general civil practice.
 7 Even experienced civil rights attorneys have difficulty overcoming the built-in bias
 8 favoring the police on the part of many jurors. Given that lawsuits to vindicate
 9 constitutional rights are in the public interest, Congress passed 42 U.S.C. Section
 10 1988 to encourage attorneys to undertake such otherwise difficult and unprofitable
 11 cases. This statute allows recovery of reasonable attorneys' fees to attorneys who
 12 prevail in Section 1983 cases.

13 The favorable trial result in this case on Plaintiff's civil rights claims was the
 14 product of a tremendous amount of hard work on the part of Plaintiff's counsel in
 15 preparing and presenting this case at trial. Because Plaintiff prevailed on his civil
 16 rights claims, he is entitled to an award of reasonable attorney fees pursuant to
 17 Federal Rule of Civil Procedure 54(d) and 42 U.S.C. § 1988. Itemizations of the
 18 requested attorneys' fees have been filed concurrently herewith.

19 The reasonableness of plaintiffs' fee request is supported by declarations of
 20 Danilo Becerra, John Burton, John C. Fattahi, Dale K. Galipo, Milton C. Grimes,
 21 Paul L. Hoffman, Donald G. Norris, Melanie Partow, Hilary L. Rau; William L.
 22 Schmidt, Thomas C. Seabaugh, and Richard Vasquez, and the exhibits attached
 23 thereto, which are filed concurrently herewith and incorporated herein by reference.

24 **II. LEGAL STANDARD**

25 **A. Legislative History of 42 U.S.C. § 1988**

26 The Civil Rights Attorney's Fees Awards Action of 1976, codified as 42
 27 U.S.C. § 1988, was enacted to encourage competent counsel to undertake and
 28 enforce civil rights cases. That law provides in relevant part as follows:

1 In any action or proceeding to enforce a provision of
 2 sections 1981, 1981(a), 1982, 1983, 1985 and 1986 of this
 3 title, title IX of Public Law 92-318, [or]...title VI of the
 4 Civil Rights Act of 1964, the court, in its discretion, may
 5 allow the prevailing party, other than the United States, a
 6 reasonable attorney's fees as part of the costs...

7 The legislative history of § 1988 indicates that the public policy behind
 8 awarding fees pursuant to § 1988 was to induce competent counsel to undertake
 9 civil rights litigation by assuring them that if they were successful in vindicating
 10 federally protected rights, they would be paid in the same manner as "is traditional
 11 with attorneys compensated by fee-paying clients," even when the results obtained
 12 are entirely non-pecuniary or solely of nominal pecuniary value. *See* Legislative
 13 History of Section 1988, S. Rep. No. 94-1011, 94th Cong. 2d Session, reprinted in
 14 1976 U.S. Code Cong. & Ad. News 5908.

15 Given this purpose, courts have long established that although the statute
 16 appears to speak in permissive terms, a court's discretion to deny attorney's fees to a
 17 successful civil rights litigant is "exceedingly narrow." *See, e.g., Ellwest Stereo*
 18 *Theatre, Inc. v. Jackson*, 653 F.2d 954, 955 (5th Cir. 1981). "Congress plainly
 19 intended that successful plaintiffs should ordinarily recover an attorney's fee unless
 20 special circumstances would render such an award unjust." *Sethy v. Alameda*
 21 *County Water Dist.*, 602 F.2d 894, 897 (9th Cir. 1979) (quotation marks omitted).

22 **B. The Supreme Court's standard in *Hensley v. Eckerhart***

23 In *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983), the Supreme Court held
 24 that the purpose of 42 U.S.C. § 1988 is to ensure effective access to the judicial
 25 process for persons with civil rights grievances. The public policy considerations
 26 behind § 1988 have been reiterated in many cases. The courts have repeatedly held
 27 that attorneys in civil rights suits are entitled to recover their full fees and costs if
 28 they achieve meaningful and substantial relief, even if they do not prevail on every

1 theory or against every party. *Bouman v. Block*, 940 F.2d 1211, 1237 (9th Cir. 1991)
 2 (plaintiff proceeding under multiple theories for sex discrimination and prevailing
 3 on FEHA claims entitled to recover attorneys' fees). As the Supreme Court
 4 explained, "[l]itigants in good faith may raise alternative legal grounds for a desired
 5 outcome, and the court's rejection of or failure to reach certain grounds is not a
 6 sufficient reason for reducing a fee. The result is what matters." *Hensley*, 461 U.S.
 7 at 435. If the rule were otherwise, attorneys would be discouraged from taking on
 8 high risk cases such as this one. *Id.*; *see also Odima v. Westin Tucson Hotel*, 53 F.3d
 9 1484, 1499 (9th Cir. 1995); *Serrano v. Unruh*, 32 Cal.3d 621 (1982); *Guam Society*
 10 *of Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 700 (9th Cir. 1996)
 11 (plaintiffs cannot be faulted for their thoroughness in pleading related claims).

12 A fully compensatory fee is one that encourages the vindication of
 13 constitutional and statutory rights through recovery of all costs and time spent on the
 14 case, calculated at private market rates. It must ensure that attorneys are paid for all
 15 the time they devote to the litigation. It is not limited by the number of causes of
 16 action on which relief is awarded, or the amount of damages recovered. *See City of*
 17 *Riverside v. Rivera*, 477 U.S. 561, 581 (1986). Parsing discrete issues according to
 18 their relative importance or outcome is disfavored because doing so would require
 19 the trial court to make mini-determinations of prevailing party status on each
 20 dispute. *See Brewster v. Dukakis*, 786 F.2d 16, 18 (1st Cir. 1986). Once a plaintiff
 21 has been determined to be the prevailing party, he is entitled to all reasonable time
 22 spent:

23 Where "the plaintiff's claims of relief . . . involve a common core of facts or
 24 [are] based on related legal theories," so that "much of counsel's time will be
 25 devoted generally to the litigation as a whole, making it difficult to divide the hours
 26 expended on a claim-by-claim basis, . . . the district court should focus on the
 27 significance of the overall relief obtained by the plaintiff in relation to the hours
 28

1 reasonably expended on the litigation.” *Ustrak v. Fairman*, 851 F.2d 983, 988 (7th
2 Cir. 1988) (quoting *Hensley*, 461 U.S. at 435 (1983)).

3 **III. ANALYSIS**

4 **A. Plaintiff as the prevailing party is entitled to attorney’s fees.**

5 A plaintiff is considered a prevailing party, and may recover attorney’s fees,
6 if he succeeds on any significant issue in litigation that achieves some of the benefit
7 sought in bringing the suit. *Hensley*, 461 U.S. at 433. The Supreme Court in *Texas*
8 *Teachers v. Garland School Dist.* 489 U.S. 782, 792 (1989) expressly held that
9 *Hensley* sets forth the appropriate test for determining a plaintiff’s prevailing party
10 status. In determining whether a plaintiff has succeeded on any significant issue in
11 litigation, the *Garland* Court looked at whether the relief on the merits of plaintiff’s
12 claim changes the legal relationship between plaintiff and defendant. Applying this
13 test, the Court in *Farrar v. Hobby*, 506 U.S. 103, 114 (1992), held that a money
14 judgment in favor of the plaintiff for any amount modified the defendant’s behavior
15 in a way that benefits the plaintiff by forcing the defendant to pay an amount that
16 would otherwise not be paid.

17 Here, Plaintiff prevailed on all claims presented to the jury and were awarded
18 significant monetary damages. The jury awarded Plaintiff \$4.5 million for the
19 present value of future costs of medical care and \$1,225,000 for past and future
20 physical pain, for a total of \$5,725,000 (Doc. No. 193). This Court has entered an
21 enforceable judgment against Defendants and in favor of Plaintiff. Plaintiff is
22 clearly the prevailing party in the litigation.

23 **B. The Court should be guided by a “lodestar” computation.**

24 The object of judicial fee determination is to simulate the results that would
25 be obtained if the lawyer were dealing with a paying client. The starting point in
26 achieving that objective is a determination of the “lodestar.” The “lodestar” is the
27 product of hours reasonably expended on the case multiplied by the customary
28 hourly rates generally prevailing in the relevant community for services rendered by

1 similarly qualified attorneys. *Henlsey v. Eckhart*, 461 U.S. 424 (1983). Under
 2 current law, the United States Supreme Court has sought to make uniform the
 3 manner of determining what a “reasonable fee” is under a fee-shifting statute such
 4 as '1988. *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992). As a general
 5 proposition, the Court adopted the position that “the ‘lodestar’ figure has, as its
 6 name suggests, become the guiding light of our fee-shifting jurisprudence. We have
 7 established a ‘*strong presumption*’ that the lodestar represents a ‘reasonable’ fee . .
 8 .” *Id.* (emphasis added).

9 **C. The relevant legal community governs reasonable rates.**

10 In determining an attorney’s reasonable hourly rate, “the court should be
 11 guided by the rate prevailing in the community for similar work performed by
 12 attorneys of comparable skill, experience, and reputation.” *Trevino v. Gates*, 99
 13 F.3d 911, 925 (9th Cir. 1996) (internal quotations omitted). “[T]he proper reference
 14 point in determining an appropriate fee award is the rates charged by private
 15 attorneys in the same legal market as prevailing counsel” *Id.* (citing *Blum v.*
 16 *Stenson*, 465 U.S. 886, 895 (1984)).

17 The Los Angeles Daily Journal recently published a table entitled, “Average
 18 Law Firm Billing Rates” for three California metropolitan areas as well as
 19 nationally. This table, attached as Exhibit A to the Declaration of Dale K. Galipo
 20 (“Galipo Decl.”), and further discussed in the Declaration of John C. Burton (“Burton
 21 Decl.”) includes the following figures:

Location	Position	2012	2011	Percent Increase
Los Angeles	Partner	\$797	\$766	4.0%
	Associate	\$550	\$516	6.6%
San Diego	Partner	\$568	\$568	0%
	Associate	\$394	\$378	4.2%

1	San Francisco	Partner	\$675	\$654	3.2%
2		Associate	\$482	\$449	7.3%
3	National	Partner	\$750	\$725	3.4%
4		Associate	\$495	\$460	7.5%

5 Galipo Decl., Ex. A. In *L.H., et. al. vs. Schwarzenegger*, 645 F.Supp.2d 888,
6 893 (E.D. Cal.2009), the court noted that “the relevant legal community is that in
7 which the forum district is located” (citing *Gates v. Deukmejian*, 987 F.2d 1392,
8 1405 (9th Cir.1992), and that a reasonable rate should reflect not only the market
9 rates, but the skill and experience of the prevailing party’s counsel.

10 “Affidavits of the plaintiffs’ attorney... and rate determinations in other cases,
11 particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence
12 of the prevailing market rate.” *United Steelworkers of Am.v. Phelps Dodge Corp.*,
13 896 F.2d 403, 407 (9th Cir. 1990). The hourly rates for each of the attorneys who
14 worked on the case are addressed in detail below:

15 **1. Hourly Rate for Dale K. Galipo, Esq.**

16 With respect to Mr. Galipo’s request of \$800 per hour, his declaration and the
17 supporting declarations attest to his accomplishments as a civil rights trial attorney.

18 Mr. Galipo graduated with a B.B.A. from the University of Michigan in Ann
19 Arbor, Michigan in 1981. He attended law school at UCLA from 1981 to 1984.
20 Galipo Decl. ¶ 7. Since 1991, he has managed his own law firm specializing in
21 major personal injury and wrongful death cases and criminal defense. *Id.* ¶ 8. Due
22 to his experience in personal injury and criminal defense law and his significant trial
23 experience, prosecuting civil rights actions involving police misconduct causing
24 serious injury or death was a natural transition for him. *Id.*

25 Mr. Galipo has tried in excess of one hundred fifty civil cases through verdict,
26 including civil rights trials, medical malpractice cases, and a variety of serious
27 personal injury cases. *Id.* ¶ 9. He has won the majority of his civil jury trials. He
28

1 has had numerous seven figure verdicts, including verdicts for \$8.1 million (*Guha v.*
 2 *Regents*); \$6.3 million (*Schulman v. City of Burbank*); \$4.5 million (*Cotton v. City*
 3 *of Eureka*); \$4 million dollars (*Mitchell v. County of Los Angeles*); and \$3.2 million
 4 (*P.C. v. City of Los Angeles*). *Id.*

5 Mr. Galipo has also tried approximately fifty criminal felony cases including
 6 several homicide cases, attempted murder cases, robbery cases, and three strikes
 7 cases. *Id.* ¶ 10. He has also won the majority of my criminal trials, including
 8 winning five homicide cases and numerous three-strike cases. During one stretch
 9 from 1995 to 1996, Mr. Galipo won six felony trials in a row including two
 10 homicides, two robberies, and two three-strikes cases. For multiple victories in
 11 three strikes cases, the Daily Journal dubbed me “The Strikes Man.” In June of
 12 2005, I won an acquittal in a jury trial in a homicide case (*People v. Robert*
 13 *Vaughn*). My client, Robert Vaughn, the co-founder of Von Dutch Clothing
 14 Company, was accused of homicide. Mr. Vaughn admitted to the shooting, but
 15 claimed it was done in self- defense. The jury acquitted my client in approximately
 16 three hours. I also prevailed in a homicide case in July of 2010 on the issue of self-
 17 defense. *Id.* A list of some of Mr. Galipo’s accomplishments in civil rights cases in
 18 the last twenty five months is included in his declaration at paragraph 11.

19 Mr. Galipo specializes in police misconduct civil rights litigation and takes on
 20 very difficult liability cases that require expertise in this area of law. *Id.* ¶ 12. He
 21 has been asked to speak at seminars on several occasions on various topics of civil
 22 rights litigation before the federal bar association. *Id.* He is routinely called for
 23 consultation by various civil rights attorneys throughout the state with regard to his
 24 opinions and input on civil rights cases. *Id.* In January of 2011, he was one of the
 25 speakers and a civil rights symposium sponsored by the University of La Verne Law
 26 School. *Id.* In addition, he was recently awarded the Defender of the Constitution
 27 Award by the Inland Empire Chapter of the Federal Bar Association. *Id.* He was
 28 also nominated as a “superlawyer” for the year 2013. *Id.*

1 Mr. Galipo worked diligently on this case for over two years. The extensive
 2 number of hours he worked on this case precluded him from accepting other
 3 employment opportunities. *Id.* ¶ 13. Based on the difficulty of this case and the
 4 skill, experience and ability necessary to prevail on this case, an hourly attorney fee
 5 rate for Mr. Galipo's services under the circumstances should be \$800 per hour. *Id.*
 6 ¶ 14.

7 Mr. Galipo was recently awarded the "lodestar" rate of \$700 per hour by
 8 Magistrate Judge Paul Abrams for his work in the case of *P.C. v. City of Los*
 9 *Angeles*. *Id.* ¶ 18. Mr. Galipo is requesting \$800 per hour based on his
 10 accomplishments as a civil rights attorney and trial lawyer, as well as the fact that a
 11 recent article in the Los Angeles Daily Journal indicated that average law firm
 12 partner billing rates in Los Angeles average \$797 per hour. *Id.*; Ex. B. Given that
 13 Mr. Galipo has his own law firm for 22 years, and has over 150 jury trials, he has
 14 more trial experience and expertise than the average law firm partner in Los
 15 Angeles. *See Galipo Decl.* ¶ 19; Ex. B.

16 **2. Hourly Rate for Thomas C. Seabaugh, Esq.**

17 A reasonable fee for the work Mr. Seabaugh performed on this case is at least
 18 \$350 per hour. *See Galipo Decl.*, ¶ 17; *Burton Decl.*, ¶¶ 12-15; Declaration of
 19 Donald G. Norris ("Norris Decl."), ¶¶ 9-12.

20 Not including the time spent on the instant motion, Mr. Seabaugh has spent
 21 192.6 hours of billable time in connection with tasks reasonably necessary to the
 22 favorable resolution of this action. Declaration of Thomas C. Seabaugh ("Seabaugh
 23 Decl.") ¶ 2. The billable time spent in connection with this motion will be set forth
 24 in a Plaintiff's reply to the instant motion. *Id.* ¶ 3.

25 Mr. Seabaugh has been the associate with primary responsibility for the day-
 26 to-day management of this case from July 2012 through the present. *Id.* ¶ 4. His
 27 work on this case included handling motions in limine, preparation of trial briefs and
 28 pretrial documents, briefing of pre-trial issues, formulation of trial strategy,

1 preparation of trial witnesses, trial preparation, post-trial motions, and drafting the
2 instant motion for attorneys' fees. *Id.* He contemporaneously tracked his time in
3 tenth of an hour increments, exercised billing judgment, excluded unproductive time
4 and time spent on administrative or clerical tasks. *Id.* A chart containing his
5 contemporaneous time records is attached as an exhibit to Mr. Seabaugh's
6 declaration. *Id.*; Ex. A.

7 Mr. Seabaugh was admitted to the California Bar in December 2010.
8 Seabaugh Decl. ¶ 5. Mr. Seabaugh received his bachelor's degree in May 2005 (in
9 philosophy, with honors) from the University of Notre Dame, which he attended on
10 a scholarship. *Id.* ¶ 6. He received his J.D. degree from the University of Michigan
11 Law School in May 2010, which he also attended in part on a scholarship. *Id.* ¶ 7.
12 At the University of Michigan Law School, he was awarded the Certificate of Merit
13 for outstanding academic performance by the dean of the law school. *Id.*

14 During the summers between classes at the University of Michigan, Mr.
15 Seabaugh worked as a judicial clerk for the Honorable Paul J. Komives in the US
16 District Court for the Eastern District of Michigan, where his responsibilities
17 included drafting decisions and orders of the court. *Id.* ¶ 8. During the summer of
18 2008, he worked in the Commercial Disputes Group of Henry Davis York, a top law
19 firm in Sydney, Australia, where was involved an international capital markets case
20 against Lehman Brothers. *Id.* While at the University of Michigan, Mr. Seabaugh
21 completed numerous legal research projects, receiving research credit in at least one
22 published article. *Id.* ¶ 9.

23 In May 2012, Mr. Seabaugh left a promising career in business law to pursue
24 a career in civil rights. *Id.* ¶ 12. While at Norris & Galanter LLP, his work was
25 billed to clients at a rate of \$220. *See* Norris Decl., ¶¶ 9-12. During the period
26 since he accepted his current position at the Law Offices of Dale K. Galipo, Mr.
27 Seabaugh has gained substantial experience in civil rights litigation in all its aspects,
28

1 from case evaluation through to trial. Seabaugh Decl. ¶ 12. He has personally
 2 handled summary judgment motions; mediation and settlement negotiations;
 3 depositions of witnesses, including experts; motions at all stages, including oral
 4 argument; trial preparation; and he has worked alongside Mr. Galipo as a second-
 5 chair attorney at trial. *Id.* Mr. Seabaugh has also personally handled the appeal to
 6 the Ninth Circuit Court of Appeals in *Krechman v. County of Riverside, et al* (Case
 7 No. 12-55347), the briefing for which has been completed. *Id.* Mr. Seabaugh is
 8 currently responsible for day-to-day management of approximately fifteen federal
 9 civil rights cases, in most of which the alleged civil rights violation has resulted in
 10 death. *Id.*

11 In addition to this case, Mr. Seabaugh is currently the associate with primary
 12 responsibility for the day-to-day handling of two civil rights cases in particular that
 13 have received significant local and national media attention: *McDade v. City of*
 14 *Pasadena* (CV12-02892 DMG), which involves the police shooting of an unarmed
 15 19-year-old student; and *Alarcon v. City of Los Angeles* (Case No. CV09-04210
 16 CBM), which involves the caught-on-video falsification of police reports by police
 17 officers later convicted of perjury and conspiracy to obstruct justice. *Id.* ¶ 13.

18 In light of the above, the Court should award Plaintiff attorneys' fees for the
 19 work performed by Mr. Seabaugh at the rate of at least \$350 per hour.

20 **3. Hourly Rate for Hilary Rau, Esq.**

21 Attorney Hilary L. Rau spent a total of 203.1 billable hours in connection
 22 with this litigation. Ms. Rau was the handling associate on this case from July 2011
 23 until she left the Law Offices of Dale K. Galipo in July 2012 to take a position as a
 24 litigation associate at another plaintiff's firm. *See* Declaration of Hilary L. Rau
 25 ("Rau Decl.") ¶ 2. Ms. Rau's work on this case included propounding and
 26 discovery; drafting motions in limine, oppositions, trial briefs and pretrial
 27 documents; opposing Defendants' post-trial Motion to Dismiss; and second-chairing
 28

1 the liability phase of trial. After July 2012, Ms. Rau continued to assist with this
 2 case by drafting motions in limine and pretrial documents for the damages phase of
 3 trial. *Id.* ¶¶ 2-3. Ms. Rau was also responsible for opposing Defendants' post-trial
 4 motion for new trial based on alleged errors in the evidentiary rulings during the
 5 liability phase of trial. *Id.* ¶ 2.

6 Ms. Rau graduated from UCLA School of Law in 2010, where she was Senior
 7 Editor for the UCLA Journal of Environmental Law and Policy and spent a semester
 8 as a judicial extern to the Honorable Christina Snyder of the United States District
 9 Court for the Central District of California. *Id.* ¶ 4. During the summer of 2009,
 10 Ms. Rau worked as a law clerk at the Los Angeles County Office of Independent
 11 Review, where she assisted staff attorneys in reviewing Internal Affairs
 12 investigations into allegations of misconduct and excessive force by members of the
 13 Los Angeles Sheriff's Department. *Id.* ¶ 4. After graduating from UCLA School
 14 of Law, Ms. Rau worked at the Center for Governmental Studies where she
 15 conducted legal and policy research relating to election law and campaign finance
 16 reform. Ms. Rau's work at the Center for Governmental studies included co-
 17 authoring an *amicus curiae* brief to the United States Supreme Court and two
 18 published policy reports. *Id.* ¶ 5.

19 Ms. Rau worked at Law Offices of Dale K. Galipo from April 2011 until July
 20 2012. *Id.* ¶ 6. Between July 2011 and July 2012, Ms. Rau was responsible for day-
 21 to-day management of approximately ten federal civil rights cases, with a particular
 22 emphasis on law and motion work and pretrial preparation. Three of the cases to
 23 which Ms. Rau was assigned—*Jones v. County of San Bernardino*, *P.C. v. City of*
 24 *Los Angeles* and this case—resulted in jury verdicts in favor of the plaintiffs. *Id.* ¶
 25 6. Ms. Rau left the Law Offices of Dale K. Galipo in July 2012 in order to accept a
 26 position as a litigation associate at The Schlehr Law Firm, P.C. Ms. Rau primarily
 27 practices plaintiff-side employment litigation with an emphasis on cases involving
 28

unlawful employment discrimination. *Id.* ¶ 7. Based on Ms. Rau's experience and qualifications to practice federal civil rights litigation, a reasonable fee for her professional services is \$285 per hour.

4. Hourly Rate for Richard Vasquez, Esq.

A reasonable fee for the work staff attorney Richard Vasquez performed on this case is \$200 per hour. Galipo Decl. ¶ 18. Mr. Vasquez is a graduate of the University of California Riverside and Southwestern Law School, and he was admitted to the California Bar in December 2010. Declaration of Richard Vasquez ("Vasquez Decl.") ¶ 2. As of today's date, Mr. Vasquez has spent 82.5 hours of time in connection with tasks reasonably necessary to the favorable resolution of this action. *Id.* ¶ 3; Ex. A. His work on this case included document review, client contacts, and other support services. *Id.* ¶ 3. He attended many of the depositions taken in this case as well as the Independent Medical Examination. *Id.* He met several times with Plaintiff and his family in order to discuss his case. *Id.* He also participated in different meetings with Mr. Galipo and the other attorneys to discuss this case as it progressed. *Id.*

Plaintiff is not requesting fees for time Mr. Vasquez spent on administrative or clerical tasks. Plaintiff is only requesting an award of attorney's fees for a fraction of the time Mr. Vasquez spent working on the case. From the time that Mr. Vasquez started working in the Law Offices of Dale K. Galipo, until the time of trial, Mr. Vasquez worked solely on the Contreras case. *Id.* ¶ 4. He attended the first phase of trial, but he is not requesting fees for his attendance at the trial. *Id.* He is further not requesting time spent on phone conversations or meetings with Mr. Contreras. Accordingly, a reasonable hourly rate for Mr. Contreras is \$200.

5. Hourly Rate for John C. Fattahi, Esq.

A reasonable fee for attorney John C. Fattahi's professional services in this case is \$400 per billable hour. Mr. Fattahi spent 30.2 hours of billable time assisting with the opposition of Defendants' post-trial motion on statute of limitations

1 grounds and was responsible for opposing Defendants' post-trial motion for
2 judgment as a matter of law pursuant to Rule 50(b) on the basis of qualified
3 immunity. Declaration of John C. Fattahi ("Fattahi Decl.") ¶ 2. Mr. Fattahi
4 graduated from UCLA School of Law in 2006, where he was Senior Editor of the
5 UCLA Law Review. *Id.* ¶ 4. Mr. Fattahi served for one year as a law clerk to U.S.
6 District Judge Virginia A. Phillips in the Central District of California, then was
7 employed as a litigation associate by the law firm of Quinn Emanuel Urquhart &
8 Sullivan, LLP in Los Angeles, California. *Id.* ¶ 4. At Quinn Emanuel, Mr. Fattahi's
9 rate for paying litigation clients was \$365 per billable hour. *Id.* ¶ 4; Ex. A
10 (Declaration of Eric J. Emanuel). While billing at this rate, the type of work Mr.
11 Fattahi performed consisted largely of document review, propounding and
12 responding to written discovery, drafting pleadings, motions practice, and attending
13 depositions. *Id.* ¶ 4. While at Quinn Emanuel, Mr. Fattahi worked on cases of
14 comparable complexity to the instant federal civil rights action, including breach of
15 contract and insurance coverage disputes. *Id.* ¶ 4. Mr. Fattahi also litigated a
16 prisoner lawsuit as a member of the Central District of California's pro bono civil
17 rights panel. *Id.* ¶ 4. Mr. Fattahi has been involved with federal civil rights
18 litigation for six years, and has been almost exclusively practicing police excessive
19 force litigation for four years. *Id.* ¶ 4.

20 In February 2009, Mr. Fattahi left his partnership-track position at Quinn
21 Emanuel in order to join the Law Offices of Dale K. Galipo, where he almost
22 exclusively practiced plaintiff's civil rights litigation until July 2011. *Id.* ¶ 4. With
23 regard to civil rights litigation in federal court, Mr. Fattahi has had primary
24 responsibility for the drafting of at least 30 complaints, the taking of at least 100
25 depositions, the opposition of at least 20 motions for summary judgment, and the
26 preparation of pretrial documents in at least 25 cases. *Id.* ¶ 4. Mr. Fattahi has
27 second-chaired several federal civil rights jury trials, obtaining success more than 50
28 percent of the time, and has served as lead trial counsel in a federal civil rights jury

1 trial in the Central District of California entitled *Harrison v. Tilton et al.*, resulting
 2 in a plaintiff's verdict. *Id.* ¶ 4. For work performed in 2009–2010 on a police
 3 shooting case, U.S. Magistrate Judge Paul L. Abrams of the Central District of
 4 California awarded Mr. Fattahi the hourly rate of \$320 by (*P.C. v. City of Los*
 5 *Angeles*, No. CV 07-3414-PLA). *Id.* ¶ 3. Mr. Fattahi currently operates a solo
 6 practice with an emphasis on police civil rights litigation, and his standard hourly
 7 rate for litigation set forth in all of his fee agreements since March 2012 is \$400 per
 8 billable hour. *Id.* ¶ 4. Based on the hourly rate actually paid by Mr. Fattahi's
 9 litigation clients, and his experience and qualifications to practice federal civil rights
 10 litigation, a reasonable fee for his professional services in this case is \$400 per
 11 billable hour. If statutory attorneys' fees were not available in cases such as this,
 12 Mr. Fattahi would not be able to represent clients such as the plaintiff in pursuit of
 13 remedies for violations of fundamental constitutional rights. *Id.* ¶ 4.

14 **6. Hourly Rate for William L. Schmidt, Esq.**

15 A reasonable fee for attorney William L. Schmidt's professional services in
 16 this case is \$400.00 per billable hour. Mr. Schmidt spent 223 hours of billable time
 17 bringing this case to trial since its inception in August 2010. Declaration of William
 18 L. Schmidt ("Schmidt Decl.") ¶¶ 2-3; Ex. A. The hours expended average out to
 19 less than 2 hours per week since the case was accepted.

20 Mr. Schmidt is an attorney duly licensed to practice law in all federal and
 21 state courts in the State of California, including the Ninth Circuit Court of Appeals,
 22 and the Southern, Central, Eastern, and Northern United States District Courts of
 23 California. Schmidt Decl. ¶ 1. He was admitted to the California Bar in June 2000.
 24 Schmidt Decl. ¶ 2. Since June 2000, Mr. Schmidt has worked tirelessly to secure the
 25 rights of incarcerated persons through his law practice that focuses on cases
 26 involving post-conviction matters, civil rights violations, and prison law. Mr.
 27 Schmidt's efforts have resulted in several published opinions. Schmidt Decl. ¶ 4.

1 Mr. Schmidt's involvement in this case spans this case's entire life span.
2 Schmidt Decl. ¶ 5. In fact, initially Mr. Schmidt was the only attorney willing to
3 undertake Mr. Contreras' case despite Contreras' contacting at least a dozen other
4 attorneys. *Id.*

5 When first retained, Mr. Contreras was incarcerated at California Men's
6 Colony in San Luis Obispo, California. Despite the distance, it was necessary for
7 Mr. Schmidt to travel to San Luis Obispo, and later Los Angeles, to meet with the
8 client and to attend depositions, court hearings and trial. Schmidt Decl.¶ 6; Ex. B.
9 However, once Mr. Galipo joined the case, Mr. Schmidt made a concerted effort to
10 limit the amount of his attorneys' fees and costs; in fact, he only attended 3
11 depositions, 2 hearings, and the trial, keeping travel to a minimum. *Id.* & Ex. B.

12 During the course of this litigation, Mr. Schmidt's work on this case included
13 reviewing Mr. Contreras' criminal and medical files, researching legal issues,
14 contacting experts regarding potential and existing legal issues, and communicating
15 my findings to Mr. Contreras and co-counsel. Schmidt Decl. ¶ 7. After Mr. Galipo
16 joined the case, Mr. Schmidt's primary responsibility was to confer with Mr. Galipo
17 about case strategy, keep Mr. Contreras updated about his case, research legal
18 issues, review plaintiffs and defendants' filings, and assist in preparation for trial.
19 *Id.*; Ex. A. The work Mr. Schmidt did in this case was necessitated by the
20 aggressive strategy pursued by the defense, the complexity of government tort
21 litigation, and the difficult legal issues presented in this case. Schmidt Decl. ¶ 3.

22 Based on his twelve years of practicing law in the areas of post-conviction
23 criminal law, civil rights, and prison administrative law, a number of which have
24 resulted in published opinions, and the market rate for attorneys with similar
25 experience and training, a reasonable fee for Mr. Schmidt's professional services in
26 this case is \$400.00 per billable hour. If the statutory attorney's fees were not
27 available in Mr. Contreras' case and others like it, Mr. Schmidt would not have
28 represented Mr. Contreras in pursuit of remedies for violations of his fundamental

1 constitutional rights because of the expense of litigating cases of this complexity and
2 difficulty. Schmidt Decl. ¶ 5.

3 7. **Hourly Rate for Melanie Partow, Esq.**

4 A reasonable hourly rate for attorney Melanie Partow is at least \$415. Ms.
5 Partow is a 2004 graduate of Southwestern University School of Law. Declaration
6 of Melanie Partow ("Partow Decl.") ¶ 2. She passed the July 2004 California Bar
7 examination and was admitted to the Bar in 2006. *Id.* Ms. Partow earned a post-
8 graduate degree in law from the University of Oxford in 2010. She is also an
9 adjunct Lecturer in Law at the University of Southern California, Gould School of
10 Law.

11 Ms. Partow served as the law clerk to the Chief Prosecutor of the
12 International Criminal Court, Luis Moreno-Ocampo, in the Hague, the Netherlands,
13 where she assisted with the prosecutions of human rights violations. *Id.* ¶ 3. Ms.
14 Partow began litigating civil rights cases in United States domestic courts in 2004
15 (first under the supervision of admitted attorneys and then as an Associate Attorney)
16 with Schonbrun DeSimone Seplow Harris & Hoffman, LLP, where she worked for
17 three years. *Id.* ¶ 4. She joined Helmer · Friedman, LLP as a Senior Associate
18 Attorney in 2008, where she continued practicing civil rights litigation for an
19 additional one and one-half years. *Id.*

20 From 2009 to the present, Ms. Partow has worked as an Associate Attorney
21 for the Law Offices of Dale K. Galipo. *Id.* ¶ 5. During this time, my practice has
22 consisted almost exclusively of excessive force/police misconduct cases. *Id.* She
23 has been and remains primarily responsible for 15-20 cases at a time. *Id.* She is
24 currently the day-to-day attorney on no less than fifteen police misconduct/civil
25 rights cases. *Id.*

26 Since passing the bar in 2004, Ms. Partow has had eight years of continuous
27 civil rights litigation experience. *Id.* ¶ 6. Her main areas of practice since becoming
28 an attorney are: (1) constitutional/civil rights law, including police misconduct

cases; (2) international human rights law, including Alien Tort Statute cases; (3) employment law; (4) appellate law; and (5) civil tort litigation, including class action litigation. *Id.* Her litigation abilities and responsibilities pertain to all phases of litigation from client intake to post-trial motions and appeals. *Id.*

Ms. Partow has second-chaired multiple trials and successfully authored and argued appeals at the state and federal levels, including, *Beets, et al. v. County of Los Angeles, et al.*, Case No. 10-55036; *Mitchell, et al., v. County of Los Angeles, et al.*, Case No. No. 07-55206 (9th Cir.); the Petition for Rehearing in *Aldana, et al. v. Del Monte, et al.*, Case No. 07-15471-B (11th Cir.); and the Petition for Rehearing in *Bauman, et al v. DaimlerChrysler Corp, et al.*, Case No. 07-15386 (9th Cir.), which was chosen for publication. *Id.* ¶ 7. She received publication credit for my authorship contributions to Steinhardt, Hoffman & Camponovo, INTERNATIONAL HUMAN RIGHTS LAWYERING: CASES AND MATERIALS (West: 2009). *Id.*

The work that Ms. Partow performed in order to prepare this matter for trial included defending the deposition of Plaintiff's Damages Expert, Dr. Fisk, and supervising, reviewing, and editing the work of less-experienced associates. *Id.* ¶ 8.

Ms. Partow's requested rate of \$415 is reasonable and in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation. *See* Partow Decl. ¶ 14; Ex. A, B.

D. The number of hours claimed is reasonable.

Plaintiffs' total basic lodestar fees, determined by multiplying the number of hours expended by the hourly rate of each attorney are as follows:

Attorney	Rate	Hours	Total
Dale K. Galipo	\$800	826.4	\$661,120.00
Thomas C. Seabaugh	\$350	192.6	\$67,410.00
Hilary Rau	\$285	203.1	\$57,883.50
John Fattahi	\$400	30.2	\$12,080.00

1	Richard Vasquez	\$200	82.5	\$16,500.00
2	William L. Schmidt	\$400	223.0	\$89,200.00
3	Melanie Partow	\$415	7.7	\$17,925.00
4	Total:			\$922,118.50

5
6 The extensive work undertaken by Plaintiff's counsel during the discovery
7 process, in taking and defending numerous depositions, opposing the Defendants'
8 many motions in limine, and all of the pretrial work necessary to bring this case to
9 trial in both phases are listed in the compilation of time records attached to the
10 declarations of the above attorneys. All times listed in the time records were
11 reasonably spent in securing a successful outcome in this case.

12 A tremendous amount of research and writing went into this case. Before the
13 start of the second phase of trial, Plaintiff had filed a total of 11 motions in limine
14 while Defendants had filed 13, not including oppositions, replies, trial briefs, and
15 other supplemental briefing. The results speak for themselves. For example, on
16 September 11, 2012, the Court granted nearly all of Plaintiff's motions in limine
17 pending at that time, while denying nearly all of the motions filed by Defendants.

18 Prior to filing this motion, counsel have reviewed their records and exercised
19 billing judgment and written off time spent on administrative or semi-clerical tasks,
20 or tasks that were not sufficiently productive. Counsel have made their best efforts
21 to exclude work that would not be billed to an ordinary fee-paying client. The action
22 was litigated efficiently and expeditiously, without needless expenditure of time or
23 unnecessary work as evidenced by the efficiency of the trial.

24 Police misconduct lawsuits advance the significant public benefit of deterring
25 abuse by law enforcement officers who would otherwise operate free of any
26 meaningful restraints. The decline of police beatings - "flashlight therapy" and other
27 forms of naked brutality - in California over the last thirty years has been directly
28

1 attributed to the emergency of the plaintiffs' police misconduct bar. The instant case
 2 exemplifies that, but for competent willing counsel, police misconduct would have
 3 gone without consequences in this instance.

4 **E. Plaintiff is entitled to fees for litigating the instant motion.**

5 In addition to the attorney's fees derived from legal work performed in
 6 preparing and litigating a case, Plaintiff is entitled to attorneys fees for their time
 7 spent establishing their right to attorneys' fees in the amount requested. *See Clark v.*
 8 *City of Los Angeles*, 803 F.2d 987, 992 (9th Cir. 1986) ("We, like every other court
 9 that has considered the question, have held that the time spent in establishing
 10 entitlement to an amount of fees awardable under section 1988 is compensable.");
 11 *see also Hernandez v. Kalinowski*, 146 F.3d 196, 199 (3rd Cir. 1998); *Glass v.*
 12 *Pfeffer*, 849 F.2d 1261, 1266 (10th Cir. 1988); *Hernandez v. George*, 793 F.2d 264,
 13 269 (10th Cir. 1986); *Lund v. Affleck*, 587 F.2d 75, 77 (1st Cir.1978) ("It would be
 14 inconsistent with the purpose of the Fees Act to dilute a fees award by refusing to
 15 compensate the attorney for the time reasonably spent in establishing and negotiating
 16 his rightful claim to the fee."). Plaintiff is also entitled to fees for time spent
 17 opposing any post-trial motions by Defendants.

18 Plaintiff's counsel will include in the compilation of the total hours associated
 19 with the instant motion, including a time estimate regarding preparation for and
 20 appearance at oral argument on February 25, in his reply brief.

21 **F. Reasonable out-of-pocket litigation costs are recoverable under 42**
 22 **U.S.C. § 1988.**

23 It is well established that attorney's fees under 42 U.S.C. § 1988 include
 24 reasonable out-of-pocket litigation expenses that would normally be charged to a fee
 25 paying client, even if the court cannot tax these expenses as "costs" under 28 U.S.C.
 26 § 1920. *Trustees of Const Industry and Laborers Health and Welfare Trust v.*
 27 *Redland Ins. Co.*, 460 F.3d 1253 (9th Cir. 2006). Therefore, Plaintiff is entitled to
 28

1 recover for reasonable out-pocket-expenses incurred in this litigation. These are
 2 expenses that a client would normally pay but which were not taxed as costs; they
 3 are, therefore, compensable under 42 U.S.C. § 1988.

4 Plaintiff's out-of-pocket expenses included the cost of retaining expert
 5 witnesses. Plaintiff incurred expert witness expenses including the following:
 6 \$44,500 to Plaintiff's medical expert Dr. H. Ronald Fisk, M.D., Ph.D. (Galipo Decl.
 7 ¶ 22; Ex. D); \$11,297.00 to Zingler & Inouye, LLC II for Plaintiff's expert
 8 economist Marianne Inouye (Galipo Decl. ¶ 23; Ex. E); and \$27,703.66 to Liz
 9 Holakiewicz & Associates for Plaintiff's expert life care planner Liz Holakiewicz
 10 (Galipo Decl. ¶ 24; Ex. F). Finally, the sum if of \$2,048.32 was incurred by Mr.
 11 Bill Schmidt in travel related to this case. Schmidt Decl. ¶ 5; Ex. B. Accordingly,
 12 Plaintiff respectfully requests an award of expenses in the amount of \$85,548.98.

13 **IV. CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests that the Court award
 15 attorney's fees in the amount of \$922,118.50. Plaintiff requests that the Court award
 16 expenses in the amount of \$85,548.98. Finally, Plaintiff requests that the Court
 17 award him attorney's fees for work performed in the litigation of the instant motion
 18 for attorney fees, including after these papers are filed, as will be stated in the reply
 19 papers.

20
 21 DATED: January 22, 2013

LAW OFFICES OF DALE K. GALIPO

22
 23 By /s/ Thomas C. Seabaugh

Thomas C. Seabaugh

24 Dale K. Galipo

25 Attorneys for Plaintiff Robert Contreras